

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA SEABROOK,

Plaintiff-Appellee,

v

DELTA FINANCIAL CORPORATION AND
STEVE KUEHL,

Defendants-Appellants.

UNPUBLISHED

October 3, 2000

No. 210261

Oakland Circuit Court

LC No. 95-503725-CL

Before: Whitbeck, P.J., and White and Wilder, JJ.

WHITE, J. (*concurring*).

I agree that the trial court properly denied defendants' motion for judgment notwithstanding the verdict on plaintiff's hostile environment claim, as reasonable minds could differ on whether a reasonable person, considering the totality of the circumstances, would have perceived Kuehl's conduct and comments as substantially interfering with plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment. *Radtke v Everett*, 442 Mich 368, 394; 501 NW2d 155 (1993). The record supports that Kuehl's comments to plaintiff were both public and private, and that his offensive conduct took place both at and away from the workplace. I also note that Kuehl was plaintiff's employer himself. Additionally, witnesses other than Richard Craven corroborated plaintiff's testimony. Several witnesses testified at trial that they overheard comments Kuehl made to plaintiff about motels or about "spending the weekend on her back," or that the women employees "could come in topless [on Saturdays] for all [Kuehl] cared." Several of plaintiff's coworkers also testified that Kuehl addressed his comments about motels only to plaintiff.

I agree that the trial court properly denied defendants' motion for a directed verdict of plaintiff's quid pro quo claim, and agree with the trial court that the jury instructions as a whole were adequate. I also agree that there was no error regarding mitigation of damages, and that denial of defendants' motion for remittitur was not an abuse of discretion.

Regarding defendants' challenges to evidentiary determinations, I agree that the Starr incident was relevant regarding defendant's intent in making comments involving motels, and that if the trial court

erred in admitting evidence of the incident between Kuehl and Starr and in excluding evidence of plaintiff's sexual conduct with another male, the errors were harmless in light of the substantial evidence supporting plaintiff's claims. I also note the general principles that a plaintiff in an employment discrimination case may introduce evidence tending to show other discriminatory treatment by the defendant toward the plaintiff or other similarly situated employees, *Jenkins v American Red Cross*, 141 Mich 785, 794-795; 369 NW2d 223 (1985); *Clark v Uniroyal Corp*, 119 Mich App 820, 824-825; 327 NW2d 372 (1982), and that, even if relevant, such evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. MRE 403.

/s/ Helene N. White